



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 13, 2003

Ms. Angelica E. Rodriguez-Barrera
McKinney & Rodriguez-Barrera
P.O. Box 2747
Corpus Christi, Texas 78403

OR2003-0954

Dear Ms. Rodriguez-Barrera:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176592.

The District Attorney for the 79th Judicial District of Jim Wells/Brooks County (the "District Attorney"), which you represent, received a request for copies of telephone records, including local, long distance, and cellular accounts, dated January 1, 2000 through November 25, 2002, for both the Jim Wells County and Brooks County District Attorney offices of the 79th Judicial District. You assert the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have reviewed the information you submitted and considered the exceptions you claim.

Initially, we address the District Attorney's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The District Attorney received the request for information on November 25, 2002. We received your general written comments and a copy of the specific information you seek to withhold on February 10, 2003 via UPS Next Day Air. Therefore, we find you did not submit the required information within the prescribed period.

Consequently, we conclude the District Attorney failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); *Open Records Decision No. 319* (1982). Normally, when some other source of law makes the information confidential or the information impacts third party interests, a compelling interest exists. *Open Records Decision No. 150 at 2* (1977). In your letter seeking an opinion from this office, you assert section 552.108 of the Government Code, a discretionary exception under the Public Information Act (the "Act"), which generally does not qualify as a compelling reason to withhold information from the public. *See* *Open Records Decision No. 586* (1991) (providing that a governmental body may waive section 552.108 of the Government Code). However, you claim mandatory exceptions under sections 552.101 and 552.117 of the Government Code, which are compelling reasons to overcome the presumption of openness. Accordingly, we will address your arguments under sections 552.101 and 552.117.

Next, we note section 552.022 of the Government Code makes the submitted information expressly public under section 552.022 of the Government Code. Section 552.022 provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

The submitted information consists of telephone account records made expressly public by section 552.022(a). Therefore, the District Attorney may withhold this information only if it is confidential under other law.

In your brief, you argue the release of the telephone numbers of confidential informants "could endanger the lives of the informants." We interpret this argument as your assertion of section 552.101 of the Government Code in conjunction with the common-law privacy.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the common-law right to privacy. Judicial decisions hold that common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Also, this office has recognized the release of personal information can constitute "a clearly unwarranted invasion of personal privacy" under "special circumstances." Open Records Decision No. 123 (1976). An imminent threat of physical danger, as opposed to a generalized and speculative fear of harassment or retribution, is one such "special circumstance." Open Records Decision No. 169 (1977). A determination of "special circumstances" can be made only on a case-by-case basis, with the governing body making the initial determination. *Id.* at 7. You claim the responsive documents contain "telephone numbers of confidential informants who would face imminent threats of physical danger." After considering your arguments and reviewing the submitted information, we find you have not demonstrated with sufficient specificity any imminent threat of physical danger that would constitute such "special circumstances." *See id.* Thus, the District Attorney may not withhold information in Exhibit 2 based on section 552.101 of the Government Code.

Next, section 552.117(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether section 552.117 protects information from disclosure depends on when the request for information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the District Attorney may withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the District Attorney received the present request for information. For any employee who timely elected to keep his or her personal information confidential, the District Attorney must withhold the home telephone numbers of the employee and the employee's family members. The District Attorney may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential. Accordingly, the District Attorney must make redactions, if necessary, as required by section 552.117 of the Government Code prior to releasing the responsive information to the requestor.

Finally, section 552.117(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members. "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure. Also, under section 552.117(2), a governmental body must withhold the officer's *former* home addresses and telephone information from disclosure. *See* Open Records Decision No. 622 (1994). Therefore, if the responsive documents contain the home

telephone numbers or private cellular telephone numbers of law enforcement officers or their family members, the District Attorney must redact such information under section 552.117(2) of the Government Code. Section 552.117 does not protect the home or cellular telephone numbers of witnesses who are not employees of the District Attorney or peace officers. Therefore, the District Attorney must release telephone numbers of witnesses.

In summary, the District Attorney must release the responsive information to the requestor with redactions as required by section 552.117 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

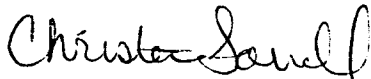
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 176592

Enc: Submitted documents

c: Mr. Jon Kelly
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(w/o enclosures)